IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.629 OF 2005
IN
CHAMBER SUMMONS NO.1808 OF 2004
IN
SUIT NO.41 OF 2003

Lal Bherumal Laungani — Appellant
VS.
Shri Max Cajetan Travasso & ors. — Respondents

Mr.Aspi Chinoy, senior counsel with Mr.K.P.Jain with
Mr.Niranjan Lapashiya with Mr.Shailesh Bonde
i/b.M/s.Niranjan & Co. for the appellant.

Mr.A.Y.Bookwala with Mr.Pankaj Thatte for the
respondents 1 to 6.

Mr.D.D.Madon i/b.M/s.Mahendra Bhatt for the respondents
7 to 33.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 8th August 2005

P.C.

Heard.

2. Admit.

3. Parties waive service through their advocates.

4. Printing of paper book dispensed.

5. The appeal is heard finally at this stage.

6. The appellant is the original plaintiff in the suit for specific performance filed against the respondents 1 to 6 (original defendants 1 to 6). The prayers made by the plaintiff in the suit are thus:

(a) this Hon'ble Court may be pleased to declare that purported termination of the Agreement dated 8th January, 1984 being Exhibit 'C' as modified by two writings dated 16th November, 1994 being Exhibits 'D' and 'E' and purported revocation of General Power of Attorney dated 8-1-1984 being Exhibit "F" hereto by defendants by letter dated 16th December, 1999 or any other manner is bad and illegal and not binding to the plaintiff and this Hon'ble Court further declare that the said Agreement and the said Power of Attorney are valid subsisting and binding to the Defendants.

(b) By an Order of this Hon'ble Court the Defendants be directed to specifically perform the said Agreement dated 7th January, 1984 being Exhibit 'C' as modified by two writings dated 16th November, 1994 being Exhibits 'D' and 'E'.

(c) That this Hon'ble Court may be pleased to appoint Prothonotary & Senior Master, High Court, Bombay or any other fit and proper person with the direction to specifically perform the said Agreement being Exhibit 'C' as modified by two writings dated 16th November, 1994 being Exhibits 'D' and 'E' and for that purpose to do all acts, deeds and things in the matter.

(d) In the alternative to prayer (b) and (c) above and in the event this Hon'ble Court comes to the conclusion that the specific performance of the Agreement is not possible for any reason whatsoever then this Hon'ble Court may be pleased to pass an order and Decree directing the Defendants directed to pay to the

plaintiff all the amount paid by the plaintiff together with interest @ rate of 18% p.a. and to pay sum of Rs.24,36,12,183/- (Rupees Twenty Four Crores Thirty Six Lakhs Twelve thousand One hundred eighty three only) to the plaintiff as per the particulars of Claim annexed at Exhibit "X" hereto and this Hon'ble Court further declare that till such payment the Defendants to pay interest @ 18% p.a. or such other rate as this Court may deem fit and proper from the date of suit till the date of Decree and thereafter till payment and this Hon'ble Court may further declare that till the entire payment of such amount with interest there shall be a charge on the suit property for the said amount in favour of the plaintiff.

(e) that this Hon'ble Court may by order and permanent injunction restrain Defendant and all persons claiming through Defendant from interfering or constructing with the development and completion of the project of the on the suit property.

(f) that pending the hearing and final disposal of the Suit this Hon'ble Court may be pleased by its order permanent injunction restrain the Defendants, their servants and agents and any other persons claiming through them from interfering with and/or obstructing the use, occupation, possession and enjoyment of the Suit property including the collection of the rent and other charges from the Tenants/Occupants.

(g) that pending the hearing and final disposal of the Suit this Hon'ble Court may be pleased by its Order and injunction the Defendants, their servants and agents and any other persons claiming through them restrain from creating 3rd party rights and/or transferring or accepting the surrender of tenancy rights in respect of various tenements on the suit property more particularly described at Exhibit "A" hereto or been collecting any rent and/or compensation from any of the

tenants or occupants of the suit property.

(h) Ad-interim and Interim reliefs in terms of prayer (e) (f) and (g) above.

(i) Cost of the Suit".

7. An application by way of chamber summons was made by the respondents 7 to 33 for their impleadment in the suit. In the affidavit in support of the chamber summons, the present respondents 7 to 33 averred that they were tenants in the suit property. It is stated that the plaintiff has filed several Suits against them for recovery of possession of their tenements and that the plaintiff failed to give alternate accommodation to them. They have, thus, prayed that they be impleaded as party defendants and the plaintiff be directed to amend the plaint. The chamber summons was contested by the plaintiff. The learned Chamber Judge by his order dated 4th May 2005 granted chamber summons by directing the plaintiff to implead the applicants as the party defendants and amend the plaint accordingly. It is this order which is under challenge in this appeal.

8. The learned Chamber Judge in his order observed that the tenants are in possession of the said property and no suit for specific performance can

be decreed and/or vacant possession can be handed over to the plaintiff in the absence of hearing being granted to the applicants-tenants. The learned Chamber Judge, accordingly, granted the applicants' prayer for their impleadment in the Suit.

9. Mr.Madon, the learned counsel for the respondents 7 to 33 raised the preliminary objection about the maintainability of the appeal. He submitted that the impugned order is not a judgement under the Letters Patent and, therefore, no appeal lies against the impugned order.

10. The scope, meaning and purport of the judgement appearing in clause 15 of the Letters Patent came up for consideration before the Supreme Court in the case of Shah Babulal Khimji v. Jayaben D. Kania & anr., **AIR 1981 S.C. 1786**. The Supreme Court observed that the order to be a judgement must contain traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or any part of the proceedings. It goes without saying that presence of a party who is neither necessary nor proper party to the lis, may result in enlarging the scope

of the Suit. It has been held by the Supreme Court that the Court interferes with an order allowing an application for addition of parties where it is found that the Court below had gone wrong in concluding that the persons sought to be impleaded in the suit were necessary or proper parties to be added as defendants in the Suit instituted by the plaintiff. In a way the question of addition of parties is of vital importance and decision on the said question decides the question of necessary or proper party in the suit. The addition of the party if not necessary or proper party may result in enlargement of the scope of the suit and such order is bound to affect the right of the plaintiff in the suit who has to prosecute the suit for specific performance of the contract not only against the party to the contract, but also against those parties who are not privy to the contract. We, therefore, hold that the impugned order amounts to judgment and, therefore, appealable under clause 15 of the Letters Patent.

11. The next question that arises is whether the respondents 7 to 33 can be said to have any direct interest in the subject matter of the suit for specific performance of the contract for sale of immovable property. Having considered the contract

and the averments made in the plaint, we have no hesitation in holding that the respondents 7 to 33 have no direct interest in the Suit for specific performance. They are not parties to the contract. In Kasturi v. Iyyamperumal & ors., **JT 2005(4) SC 565,** the Apex Court held that before a person can be impleaded as a party defendant in a suit for specific performance of the contract for sale, two tests must be satisfied. First, there must be a right to the suit property for the same relief against a party relating to the same subject matter involved in the proceedings for specific performance of contract for sale and, secondly, it would not be possible for the Court to pass effective decree or order in the absence of such a party. The respondents 7 to 33 do not satisfy these tests. Any decree or order for specific performance that may be passed in favour of the plaintiff and in the absence of respondents 7 to 33 herein shall not affect the rights of the said respondents. The possession of the respondents 7 to 33 cannot be affected nor can they be dispossessed from the subject property in execution of the decree for specific performance of the contract. The cause of action that may accrue to the respondents 7 to 33 by virtue of clause 19 of the Agreement or any right given to the present

plaintiff by the vendors under clause 19 cannot be said to have anything to do with the suit for specific performance of the contract and cannot and ought not to be combined with the cause of action in the present suit for specific performance of the contract. The respondents 7 to 33 are strangers to the Agreement for sale and are neither necessary nor proper parties and, therefore, not entitled to be joined as party defendants.

12. We are, thus, satisfied that the respondents 7 to 33 cannot be added as party defendants in the suit for specific performance of the contract for sale and by ordering their impleadment, the learned Chamber Judge committed serious error of law.

13. We, accordingly, set aside the order dated 4th May 2005. As a result thereof, the chamber summons no. 1808 of 2004 taken out by the respondents 7 to 33 stands dismissed. We clarify by way of abundant caution though it is not necessary that the right of the respondents 7 to 33 as the tenants in the subject property shall not be affected by any order in the suit or decree for specific performance of the contract for sale if passed in favour of the plaintiff nor shall in the execution of such decree or order the possession of the respondents 7 to 33

in the suit property be affected or disturbed.

14. No costs.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)